


# Administrative Office of the Courts

Chief Justice Richard C. Howe  
Chairman, Utah Judicial Council

## MEMORANDUM

Daniel J. Becker  
State Court Administrator  
Myron K. March  
Deputy Court Administrator

**To:** Heather Mackenzie-Campbell, Audit Manager  
**From:**  Brent Johnson, General Counsel  
**Re:** Jail Time in Lieu of Fine  
**Date:** January 22, 2001

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This memorandum is in response to your question as to the procedures that must be followed in order to allow a defendant to serve jail time rather than paying a fine that was previously imposed. This question is fairly well answered by § 77-18-8, a copy of which is attached. This section specifically states that a court may order a defendant to serve jail time in lieu of paying a fine, as long as the judge has previously ordered, but suspended, a jail sentence. This section specifically states that if, at sentencing, only a fine was ordered, the defendant cannot be required or allowed to serve jail time. A defendant must be aware of the possibility of jail time from the outset in order for jail time to be imposed.

In theory, because a failure to pay a fine is contempt of court, a judge could declare contempt, sentence the person to jail, and then excuse the original fine. However, there would be two concerns with this practice. First, a justice court judge may only order a maximum of five days in jail for contempt. Also, a contempt finding would potentially be subject to reversal if the judge, in practically the same instant, faulted a defendant for violating a court order and then excused the defendant from complying with the same order.

As long as Judge [redacted] is ordering, but suspending, a jail sentence at the beginning, he can subsequently allow and order defendants to serve the suspended jail time in lieu of paying the fine. Please let me know if you have any questions about this.

**The mission of the Utah judiciary is to provide the people an open, fair,  
efficient, and independent system for the advancement of justice under the law.**